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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**PATRICIA A. ROSSI**

**Plaintiff,**

**v.**

**CISCO SYSTEMS, INC. a California  
corporation; CISCO SYSTEMS, INC.  
LONG-TERM DISABILITY PLAN; CISCO  
SYSTEMS, INC. EMPLOYEE WELFARE  
PLAN; and METROPOLITAN LIFE  
INSURANCE CO., a New York corporation,**

**Defendants.**

**CASE NO.**

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND DAMAGES FOR  
DISABILITY BENEFITS UNDER  
ERISA WELFARE PLAN**

Plaintiff, PATRICIA A. ROSSI, complains of Defendants, and each of them, and alleges  
as follows:

**JURISDICTION**

1. This is an action by a participant in an employee welfare benefit plan against the Plan and its named fiduciaries, for injunctive relief and damages to enforce her rights under the Plan to receive Long-Term Disability ("LTD") benefits, because Defendant Metropolitan Life Insurance Co. ("MetLife") has arbitrarily denied her appeal for continued LTD benefits. Jurisdiction is conferred on this Court by Sections 502(e) and (f), 502(a)(1)(A) and (B), and 502(a)(2) and (3) of ERISA, 29 U.S.C. §§1132(e) and (f), 1132 (a)(1)(A) and (B), and 1132(a)(2) and (3), and by 29 U.S.C. §1331(a) and 28 U.S.C. §2201.

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1                                   **VENUE AND INTRA-DISTRICT ASSIGNMENT**

2           2.       The Defendants Cisco Systems, Inc. maintains its principal place of business  
3 within this District, and its. Long-Term Disability Plan (“LTD Plan”) and Employee Welfare  
4 Plan are administered within this District. Defendant MetLife is doing business within this  
5 District. Venue is thus proper pursuant to §502(e)(2) of ERISA, 29 U.S.C. §1132(e)(2).

6           3.       The actions and injuries complained of arose in the County of San Francisco,  
7 because Plaintiff worked primarily out of the San Francisco offices of Cisco Systems, Inc.,  
8 although at least half of her time was spent traveling throughout the world on business for Cisco.  
9 Accordingly, assignment to the San Francisco District Court is proper pursuant to Civil Local  
10 Rule 3-2 (c).

11                                   **PLAINTIFF**

12           4.       Plaintiff Patricia A. Rossi (“Rossi”) is a natural person, and a resident of  
13 Monterey, California. At all times material, she was an employee of Cisco Systems, Inc. and a  
14 participant in the Defendant Plans, within the meaning of Section 3(7) of ERISA, 29 U.S.C.  
15 §1102(7).

16                                   **DEFENDANTS**

17           5.       Defendant Cisco Systems, Inc. (“Cisco”) was and is a California corporation, with  
18 its principal place of business in San Jose, California. At all material times, Cisco was and is the  
19 Employer maintaining the Defendant Plan, and is therefore a Plan “administrator”, “fiduciary”  
20 and “party in interest”, within the meaning of Sections 3(14), (16) and (21) of ERISA, 29 U.S.C.  
21 §§1002(14), (16) and (21).

22           6.       Defendant LTD Plan was and is an employee welfare benefit plan, within the  
23 meaning of Section 3(1) of ERISA, 29 U.S.C. §1002(1). Plaintiff is informed and believes, and  
24 thereon alleges that at all material times the LTD Plan was fully insured through premiums paid  
25 to MetLife pursuant to that certain Group Policy No. 113189-G.

26           7.       Defendant MetLife is, on information and belief, the party designated in the above  
27 Plan to make determinations of disability and benefit payments under the Plan and said Group  
28 Policy. Defendant MetLife is therefore a Plan "administrator", "fiduciary" and "party-in-

1 interest", within the meaning of sections 3(14), (16) and (21) of ERISA, 29 U.S.C. §§1002(14),  
2 (16) and (21).

3 8. Defendant Employee Welfare Plan was and is an employee welfare benefit plan,  
4 within the meaning of Section 3(1) of ERISA, 29 U.S.C. §1002(1). Plaintiff is informed and  
5 believes, and thereon alleges that at all material times the Plan was self-funded.

6 **FACTS**

7 9. Plaintiff Rossi was employed by Cisco Systems, Inc. as Global Business  
8 Development Manager since 2007. In that capacity, she was responsible for driving almost \$3  
9 Billion in annual revenue for Cisco across 61 countries, with Cisco's largest partner and re-seller  
10 in South Africa. She had a team of 13 employees who reported to her, and traveled about 65%  
11 of her time. Much of her work was by computer and email, and she generally had to respond to  
12 about 2,000 emails per week. She made over \$250,000/year in salary, bonuses and commissions.

13 10. Beginning in 2008, Rossi experienced pain in her neck, hands and arms, with  
14 shooting pains up her arm and over her shoulders. She was diagnosed with a pinched nerve in  
15 her neck, and underwent a cervical fusion in June 2009. She moved to California to continue to  
16 work for Cisco, and gradually returned to full-time work in April 2010. In 2010, Rossi was also  
17 having increasing difficulties with her lower back, owing to congenital scoliosis, which had  
18 increased in curvature to about 63 degrees. The problems with her gait caused her to tear the  
19 meniscus in her left knee, but she quickly went back to work. Rossi then had lumbar fusion  
20 surgery in June 2011, and tried to go back to work again with reduced hours and  
21 accommodations in October 2011, but was never able to return to work full time. Rossi's  
22 problems with her knee worsened, and she underwent a total knee replacement in June 2013.

23 11. Since Rossi's lumbar fusion in 2011, she was only able to return to work at all  
24 because of extensive accommodations provided by Cisco, by her main customer in South Africa,  
25 and by personally employing a person to do her computer work and all her housekeeping at  
26 home. In order to do the computer and email work at Cisco, her South African re-seller provided  
27 funds to pay for 3 employees internally at Cisco to assist her in doing almost all her computer  
28 and email work, in addition to staying on conference calls with her in order to take notes and

1 prepare memos for action items to her team. Her main customer in South Africa even agreed to  
2 travel to San Francisco to meet with her, so she would not have to travel there. When Rossi was  
3 required to travel, she had to stand up for the entire flight, except for takeoffs and landings. She  
4 also had to use porters and bellmen to handle all her luggage, because she could not lift or carry  
5 any bags.

6 12. MetLife initially found Rossi was totally disabled in July 2011, due to her  
7 diagnoses of scoliosis, lumbar stenosis, cervical and lumbar degenerative disk disease and  
8 cervical radiculopathy, and began paying her LTD benefits of approximately  
9 \$12,000.00/month... After paying her 24 months of Long-Term Disability benefits, MetLife had  
10 Rossi's file reviewed by a Nurse, who opined that there was insufficient "objective clinical  
11 findings" to support the diagnosis of cervical radiculopathy, and that the other conditions were  
12 limited under the Policy to no more than 24 months. MetLife terminated Rossi's LTD benefits  
13 effective December 21, 2013.

14 13. Because Rossi was then left with no income to support herself, she intended to  
15 return to part-time work at Cisco in January 2014 but then tore and detached the retina in her left  
16 eye about December 26, 2013. She had immediate surgery to repair the torn retina, but  
17 complications from the surgery caused swelling and puckering in the retina. Because of the  
18 vision difficulties, she took off work entirely about March 10, 2014 and has been unable to work  
19 since then.

20 14. Rossi timely appealed the termination of her LTD benefits to MetLife beginning  
21 in June 2014, with supplemental appeals in August, September and December 2014. These  
22 appeals were supported with extensive medical, functional and vocational reports and testing,  
23 including objective clinical findings of Rossi's cervical radiculopathy, as well as a new diagnosis  
24 of chronic Thoracic Outlet Syndrome, with MRI/MRA/MRV scans showing compression of the  
25 brachial plexus, as well as pulse oximetry testing and other functional testing which confirmed  
26 that Rossi could not use her hands for repetitive activities for more than a few minutes without  
27 severe pain and migraines.

28 15. In response to this evidence, MetLife segmented Rossi's claims into several

pieces, attempting to separate them by diagnosis rather than examining all the evidence as a whole. MetLife had the claim file reviewed by several physicians, provided by companies notorious for employing physicians to write favorable opinions for insurance companies. None of these physicians ever examined Rossi in person, or even spoke to her or her treating or examining physicians. After several reviews by these physicians, MetLife upheld its termination of Rossi's LTD benefits by letter of September 10, 2015, concluding that there was still insufficient evidence to support disability from cervical radiculopathy (despite the contrary opinions of two of Rossi's treating physicians), and that functional limitations from Rossi's Thoracic Outlet Syndrome, migraines and vision deficits would not prevent her from returning to work at her previous job with Cisco (despite Rossi's functional capacity testing that showed she could only perform very part-time sedentary work earning about \$15/hr.).

16. Because of MetLife's arbitrary and bad faith denials of her claim for LTD benefits since December 21, 2013, Plaintiff Rossi has been required to incur expenses for medical, functional and vocational testing, as well as attorneys' fees to pursue her appeal, only to have MetLife dismiss or ignore all the evidence submitted.

**FIRST CLAIM**  
[Claim for Disability Benefits]

17. Plaintiff incorporates by reference and realleges the allegations contained in Paragraphs 1 through 16 above.

18. Defendants, and each of them, have failed to comply with their duties under ERISA and the applicable Plan documents to afford Plaintiff a full and fair review and determination of her claim for continued long-term disability benefits. Defendant MetLife has ignored Plaintiff's evidence supporting her continued disability, and relied solely on a records review by a biased physicians in claiming Plaintiff does not suffer from Thoracic Outlet Syndrome, cervical radiculopathy, migraines and vision deficits which preclude her from using her hands and arms for any repetitive activity, contrary to the opinions and diagnostic tests by all of Plaintiff's treating and examining physicians. Defendant MetLife's denial of benefits and

1 dismissal of Plaintiff's appeal was biased and tainted by its pecuniary conflict of interest.

2 Accordingly, this Court may not defer to MetLife's decision, and exercises *de novo* review.

3 19. Moreover, the Cisco Systems, Inc. Group Policy providing such LTD benefits  
4 contains no provision conferring any discretion on MetLife in administering claims, so this Court  
5 exercises *de novo* review on this basis as well.

6 20. By their failure and refusal to pay Plaintiff's long-term disability benefits,  
7 Defendants, and each of them, violated the terms of the Plan and Policy and Plaintiff's rights to  
8 such benefits pursuant to ERISA Section 502(a)(1)(B), 29 U.S.C. §1132(a)(1)(B).

### 9 **SECOND CLAIM**

10 [Breach of Fiduciary Duty]

11 21. Plaintiff incorporates by reference and re-alleges the allegations contained in  
12 Paragraphs 1 through 20, above.

13 22. As the alleged Plan fiduciary responsible for determining claims for benefits,  
14 Defendant MetLife was required, pursuant to Part 4 of Title I of ERISA to discharge its duties  
15 with respect to benefit claims prudently, for the exclusive benefit of Plan participants and  
16 beneficiaries, and in accordance with the specific fiduciary obligations imposed therein and  
17 under the Plan documents.

18 23. MetLife breached said fiduciary duties by, among other things:

- 19 (a) reversing its own determination that Plaintiff was disabled from her own  
20 occupation, without any improvement in Plaintiff's medical condition;
- 21 (b) repeatedly using file reviewing physicians from companies with financial  
22 incentives to opine in favor of insurers;
- 23 (c) repeatedly refusing to consider Plaintiff's pain as a functional limitation;
- 24 (d) failing to conduct an in-person Independent Medical Examination of  
25 Plaintiff, despite having the authority under the Policy to do so.

26 24. In its decision to terminate Plaintiff's LTD benefits, and its refusal to provide a  
27 full and fair review of her appeal, Defendant MetLife acted arbitrarily and capriciously, in willful  
28

disregard of the terms of the Plan and Policy provisions, the medical evidence submitted, and its legal obligations. At all material times, Defendant MetLife acted herein only in its own financial interest in denying Plaintiff's claim. Accordingly, Defendant MetLife has breached its fiduciary obligations under ERISA and the Plan.

### **THIRD CLAIM**

[Waiver/Unclean Hands]

25. Plaintiff incorporates by reference and re-alleges the allegations contained in Paragraphs 1 through 24, above.

26. Throughout the course of Plaintiff's LTD claim and appeal, Defendant MetLife has wrongfully terminated Plaintiff's LTD benefits and denied her appeal, while demanding that Plaintiff reimburse it for any award of Social Security Disability benefits. Accordingly, Defendant MetLife has, by its own conduct in breach of its fiduciary duties, waived and forfeited any legal or equitable claim to set-off Plaintiff's future award of Social Security benefits from the LTD benefits owing to Plaintiff.

### **FOURTH CLAIM**

[Reinstatement of Life Insurance Benefits]

27. Plaintiff incorporates by reference and re-alleges the allegations contained in Paragraphs 1 through 26, above.

28. Plaintiff sues the Defendant Cisco Systems, Inc. Welfare Plan in order to obtain complete relief for Defendant MetLife's wrongful termination of her LTD benefits and bad faith denials of her appeals. Upon the restoration of Plaintiff's LTD benefits, Defendants should be required to retroactively reinstate Plaintiff's life insurance and other welfare benefits, pay any of Plaintiff's outstanding claims thereunder, and reimburse her for premiums she was wrongfully required to pay.

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1 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them as  
2 follows:

3 1. On the First Claim: For an Order directing Defendants to pay to Plaintiff the  
4 Long-Term Disability benefits to which she is entitled under the terms of the Plan and Policy,  
5 together with pre-judgment interest from the date such benefits should have been paid, and  
6 barring Defendants from terminating Plaintiff's LTD benefits in the future absent some  
7 significant improvement in her medical condition.

8 2. On the Second Claim: For an Order removing Defendant MetLife as Plan  
9 fiduciary and barring it from any further responsibility for claims determinations under the Plan.

10 3. On the Third Claim: For an Order barring MetLife from any setoff or  
11 reimbursement from Plaintiff's recovery of Social Security Disability benefits, during the period  
12 December 21, 2013 to the date Plaintiff's LTD benefits are reinstated.

13 4. On the Fourth Claim: For an Order requiring Defendants to restore Plaintiff's life  
14 insurance, with waiver of all premiums during the period of her disability, and other welfare  
15 benefits wrongfully withheld.

16 5. On all Claims:

17 a. For costs of suit herein, including reasonable attorneys' fees; and

18 b. For such other and further relief as the Court deems just and proper.

19  
20 DATED: September 30, 2015

LAW OFFICE OF GEOFFREY V. WHITE

21  
22 By\_\_\_\_/s/\_\_\_\_\_  
23 Geoffrey V. White,  
24 Attorneys for Plaintiff  
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